



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0366]

RIN 1625-AA00

Safety Zone; Hurricanes, Tropical Storms, and other Storms with High Winds;

Captain of the Port Zone Sector Virginia

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the navigable waters of the Sector Virginia Captain of the Port (COTP) Zone, to be enforced in the event of hurricanes, tropical storms, and other storms with high winds. This action is necessary to ensure the safety of the waters of the Sector Virginia COTP Zone. This rule establishes actions to be completed by industry and vessels within the COTP Zone before hurricanes, tropical storms, and other storms with high winds threatening the State of Virginia make landfall, and afterwards as well.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0366 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Ashley Holm, Chief Waterways Management Division U.S. Coast Guard; 757-617-7986, Ashley.E.Holm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Virginia has the potential to be affected by hurricanes and tropical storms on a yearly basis, especially between the months of June and November. Additionally, severe storms generating high winds and rough seas are also common in the winter months. In response, on September 14, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; Hurricanes, Tropical Storms, and other Storms with High Winds; Captain of the Port Zone Virginia” (88 FR 63042). There, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended October 16, 2023, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Virginia (COTP) has determined that potential hazards associated with hurricanes, tropical storms, and other storms pose a safety concern to the maritime community. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after a hurricane, tropical storm, or other storm.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment that concurred with the proposed rulemaking on our NPRM published September 14, 2023. The comment also addressed the need for Coast Guard Sector Virginia to maintain and update the Port Heavy Weather

Plan. The comment is referring to the Maritime Severe Weather Contingency Plan, which advises the maritime community of the sequence and timing of COTP decisions and actions made pursuant to 33 CFR parts 160 and 165 that may be taken when there is the threat of a hurricane. The Plan also recommends actions to be taken to minimize storm related deaths, injury, damage, and threats to the environment. Coast Guard Sector Virginia will review and update the Maritime Severe Weather Contingency Plan as necessary to reflect the promulgation of this rule, and to provide guidance on advisable steps to take in addition to those required by the rule. Aside from adding the word “Sector” to the title of the regulation to conform to 33 CFR 3.25-10, there are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone on the navigable waters of the Sector Virginia COTP Zone during hurricanes, tropical storms, and other storms with high winds. This safety zone establishes actions to be completed by local industry and vessels in the COTP zone prior to landfall of hurricanes, tropical storms, and other storms with high winds threatening Virginia and in the aftermath of landfall. Port Conditions (WHISKEY, X-RAY, YANKEE, ZULU, and RECOVERY) are standardized terms for states of operation instituted by the COTP which are clearly communicated to port facilities, vessels, and members of the Marine Transportation System (MTS).

Ports and waterfront facilities are encouraged to take action when specific Port Conditions are declared. Under Port Condition WHISKEY, ports and waterfront facilities should remove all debris and secure potential flying hazards. Upon a declaration that Port Condition X-RAY is in effect, port facilities should ensure that potential flying debris and hazardous materials are removed, and that loose cargo and cargo equipment is secured. Upon a declaration of Port Condition YANKEE, terminal operators should terminate all cargo operations not associated with storm preparations. All facilities should continue to operate in accordance with approved Facility Security

Plans (as defined at 33 CFR 101.105, and as further described in 33 CFR 105.400 to 105.415), and to comply with all applicable requirements of the Maritime Transportation Security Act of 2002 (46 U.S.C. chapter 701).

The COTP retains flexibility in controlling and reconstituting vessel traffic during periods of heavy weather, and it will allow for the expedited resumption of the MTS following such events. The safety zone consists of all waters of the territorial seas within the Sector Virginia COTP Zone, as defined in 33 CFR 3.25-10. Portions of the safety zone might be activated at different times, as conditions dictated. Notice of Port Conditions and their requirements will be given via Marine Safety Information Bulletins and Broadcast Notice to Mariners. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time of day of the regulated area. This regulatory action determination is based on the necessity to protect life, port infrastructure, and the environment during hurricanes, tropical storms, and other storms with high winds. The scope of the regulation is narrow

and will only apply when a hurricane, tropical storm, or other storm with high winds impacts the navigable waters of the Virginia COTP Zone. These events are infrequent and of short duration. Regulatory restrictions will be lifted as soon as practicable.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal Government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive

023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that prohibits entry in certain waters of the Sector Virginia COTP Zone for the duration needed to ensure safe transit of vessels and industry before and after a hurricane, tropical storm, or other storm with high winds. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.520 to read as follows:

§ 165.520 Safety Zone; Hurricanes, Tropical Storms, and other Storms with High Winds; Captain of the Port Zone Sector Virginia.

(a) *Regulated areas.* All navigable waters, as defined in 33 CFR 2.36, within the

Captain of the Port Zone Sector Virginia, as described in 33 CFR 3.25-10, or some portion of those waters, during specified conditions. Port conditions and safety zone activation may vary for different portions of the regulated area at different times, based on storm conditions and its projected track.

(b) *Definitions.*

Captain of the Port means Commander, Coast Guard Sector Virginia.

Representative means any Coast Guard commissioned, warrant, or petty officer or civilian employee who has been authorized to act on the behalf of the Captain of the Port.

Port Condition WHISKEY means a condition set by the COTP when National Weather Service (NWS) weather advisories indicate sustained gale force winds (39-54 mph/34-47 knots) are predicted to reach the COTP zone within 72 hours.

Port Condition X-RAY means a condition set by the COTP when NWS weather advisories indicate sustained gale force winds (39-54 mph/34-47 knots) are predicted to reach the COTP zone within 48 hours.

Port Condition YANKEE means a condition set by the COTP when NWS weather advisories indicate that sustained gale force winds (39-54 mph/34-47 knots) are predicted to reach the COTP zone within 24 hours.

Port Condition ZULU means a condition set by the COTP when NWS weather advisories indicate that sustained gale force winds (39-54 mph/34-47 knots) are predicted to reach the COTP zone within 12 hours.

Port Condition RECOVERY means a condition set by the COTP when NWS weather advisories indicate that sustained gale force winds (39-54 mph/34-47 knots) are no longer predicted for the regulated area. This port condition remains in effect until the regulated areas are deemed safe and are reopened to normal operations.

(c) *Regulations.* (1) Port Condition WHISKEY. All vessels must exercise due diligence in preparation for potential storm impacts. All oceangoing tank barges and

their supporting tugs and all self-propelled oceangoing vessels over 500 gross tons (GT) must make plans to depart no later than setting of Port Condition Yankee unless authorized by the COTP. The COTP may modify the geographic boundaries of the regulated area and actions to be taken under Port Condition WHISKEY, based on the trajectory and forecasted storm conditions.

(2) Port Condition X-RAY. All vessels must ensure that potential flying debris and hazardous materials are removed, and that loose cargo and cargo equipment is secured. Vessels at facilities must carefully monitor their moorings and cargo operations. Additional anchor(s) must be made ready to let go, and preparations must be made to have a continuous anchor watch during the storm. Engine(s) must be made immediately available for maneuvering. Also, vessels must maintain a continuous listening watch on VHF Channel 16. All oceangoing tank barges and their supporting tugs and all self-propelled oceangoing vessels over 500 GT must prepare to depart the port and anchorages within the affected regulated area. These vessels shall depart immediately upon the setting of Port Condition YANKEE. During this condition, slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. Vessels that are unable to depart the port must contact the COTP to receive permission to remain in port. Vessels with COTP's permission to remain in port must implement their pre-approved mooring arrangement. The COTP may require additional precautions to ensure the safety of the ports and waterways. The COTP may modify the geographic boundaries of the regulated area and actions to be taken under Port Condition X-RAY based on the trajectory and forecasted storm conditions.

(3) Port Condition YANKEE. Affected ports are closed to all inbound vessel traffic. All oceangoing tank barges and their supporting tugs and all self-propelled oceangoing vessels over 500 GT must have departed the regulated area. The COTP may require additional precautions to ensure the safety of the ports and waterways. The

COTP may modify the geographic boundaries of the regulated area and actions to be taken under Port Condition YANKEE based on the trajectory and forecasted storm conditions.

(4) Port Condition ZULU. Cargo operations are suspended, except final preparations that are expressly permitted by the COTP as necessary to ensure the safety of the ports and facilities. Other than vessels designated by the COTP, no vessels may enter, transit, move, or anchor within the regulated area. The COTP may modify the geographic boundaries of the regulated area and actions to be taken under Port Condition ZULU based on the trajectory and forecasted storm conditions.

(5) Port Condition RECOVERY. Designated areas are closed to all vessels. Based on assessments of channel conditions, navigability concerns, and hazards to navigation, the COTP may permit vessel movements with restrictions. Restrictions may include, but are not limited to, preventing, or delaying vessel movements, imposing draft, speed, size, horsepower or daylight restrictions, or directing the use of specific routes. Vessels permitted to transit the regulated area shall comply with the lawful orders or directions given by the COTP or representative.

(6) Regulated Area Notice. The Coast Guard will provide notice of where, within the regulated area, a declared Port Condition is to be in effect via Broadcast Notice to Mariners, Marine Safety Information Bulletins, or by on-scene representatives.

(7) Exception. This regulation does not apply to authorized law enforcement agencies operating within the regulated area.

Dated: October 27, 2023.

J. A. Stockwell,
Captain, U.S. Coast Guard,
Captain of the Port, Sector Virginia.

